PROPOSED DECLARATORY RULING 2006-2
Political Committees Established or Controlled by Communicator Lobbyists

At its Special Meeting on September 20, 2006, the Commission voted to initiate a series of declaratory rulings concerning the application of Connecticut General Statutes §§ 9-333l(h) and 9-333l(i), as amended by October 25 Special Session, Public Act No. 05-5, entitled, "***An Act Concerning Comprehensive Campaign Finance Reform for Statewide Constitutional and General Assembly Offices***," and Public Act 06-137, "***An Act Concerning the Campaign Finance Reform Legislation and Certain Election Law and Ethics Provisions***" (hereinafter collectively referred to as "the Act"), to the political activities of lobbyists and state contractors. The Act becomes effective on December 31, 2006.

This declaratory ruling will expound upon an aspect of the new lobbyist contribution and solicitation ban as it applies to political committees established or controlled by communicator lobbyists. The Commission has received many questions concerning the ban and its application to political committees established or controlled by lobbyists. The Commission decided to issue this ruling to provide guidance to those subject to the ban regarding the Commission's interpretation and prospective enforcement of the ban.[1]

The relevant statutory sections encompassing the lobbyist contribution ban were enacted in Section 29 of October 25 Special Session, Public Act 2005-5, and amended by Section 24 of Public Act 06-137, as follows:

> Sec. 29. Section 9-333*l* of the general statutes is amended by adding subsections (h) and (i) as follows (*Effective December 31, 2006, and applicable to elections held on or after said date*):
>
> (NEW) (h) ***No*** communicator lobbyist, member of the immediate family of a communicator lobbyist, or ***political committee established or controlled by a communicator lobbyist or a member of the immediate family of a communicator lobbyist shall make a contribution or contributions to***, or for the benefit of (1) an exploratory committee or a candidate committee established by a candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State

[1] A declaratory ruling has the same status and binding effect as an order issued in a contested case and shall be a final decision for purposes of appeal in accordance with the provisions of Conn. Gen. Stat. §4-183, pursuant to Conn. Gen. Stat. §4-176(h). No one is on file with the Commission as having requested notice of declaratory ruling petitions on this subject matter pursuant to Conn. Gen. Stats. §4-176(c).

Comptroller, State Treasurer, Secretary of the State, state senator or state representative, (2) a political committee established or controlled by any such candidate, (3) a legislative caucus committee or a legislative leadership committee, or (4) a party committee. (Emphasis added.)

(NEW) (i) ***No*** communicator lobbyist, immediate family member of a communicator lobbyist, agent of a communicator lobbyist, or ***political committee established or controlled by a communicator lobbyist or any such immediate family member or agent shall solicit*** (A) a contribution on behalf of a candidate committee or an exploratory committee established by a candidate for the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, State Treasurer, Secretary of the State, state senator or state representative, a political committee established or controlled by any such candidate, a legislative caucus committee, a legislative leadership committee or a party committee, or (B) the purchase of advertising space in a program for a fund-raising affair sponsored by a town committee pursuant to subparagraph (B) of subdivision (10) of section 9-333b, as amended by this act. (Emphasis added.)

(j) The provisions of subdivision (1) of subsection (h) of this section and subsection (i) of this section shall not apply to the campaign of a communicator lobbyist, immediate family member of a communicator lobbyist or agent of a communicator lobbyist who is a candidate for public office or to an immediate family member of a communicator lobbyist who is an elected public official.

Any person who violates any provision of subsections (h) and (i) of this section shall be subject to a civil penalty, imposed by the State Elections Enforcement Commission, of not more than five thousand dollars or twice the amount of any contribution donated or solicited in violation of subsection (h) or (i) of this subsection, whichever is greater.

With that in mind, we first turn to the individuals and entities to whom the ban applies. The statute provides that those subject to the contribution and solicitation ban are *communicator lobbyists*, as distinct from client lobbyists. A communicator lobbyist is someone compensated for lobbying over the threshold amount of $2,000 in any calendar year. Conn. Gen. Stat. §1-91. "Communicator lobbyist" is further defined in Conn. Gen. Stat. §1-91(v) as "a lobbyist who communicates directly or solicits others to communicate with an official or his staff in the legislature or executive branch of government or in a quasi-public agency for the purpose of influencing legislative or administrative action." Conn. Gen. Stat. §9-333a (16) provides that lobbyist has the same meaning as Conn. Gen. Stat. §1-91 in the State Code of Ethics.

The Act proscribes a communicator lobbyist from contributing to or soliciting a contribution for certain candidates and committees. In addition, the ban also applies to

such lobbyist's immediate family, and political committees established or controlled by a communicator lobbyist and their immediate family. The types of committees that a communicator lobbyist, his or her immediate family and political committees established or controlled by them cannot contribute to are:

1) Candidate committees for statewide office or the General Assembly or exploratory committees for those offices;
2) Political committees established or controlled by those candidates;
3) Legislative leadership and legislative caucus committees; or
4) Party committees (state central and town committees).

To assess what the legislature meant by the phrase "established or controlled" we apply well settled principles of statutory construction. Because there is no statutory definition of "establish" or "control," we look to the "common meaning of the word[s] and [their] dictionary definition." Gallogly v. Kurrus, 97 Conn. App. 662, 667 (2006). According to The American Heritage Dictionary, (4th Ed. 2004), "establish" means "[t]o set up; found. . . [t]o bring about; generate." Thus, the plain meaning of the word "establish" in the context of political committees would involve the organization, origination, formation or foundation of a political committee.

The prohibition would therefore appear to apply to all political committees organized or founded by a communicator lobbyist, or in which a communicator lobbyist had a substantial or significant role in the political committee's formation. Committees established by a communicator lobbyist include, but are not limited to, where: (1) one or more of the individuals serving as officers of the committee on the original statement of organization were communicator lobbyists; (2) the business entity or organization that established the committee was a registered communicator lobbyist with the Office of State Ethics or its predecessor, the State Ethics Commission; and/or (3) for a business entity or organization that is a communicator lobbyist and forms a political committee on or after December 31, 2006, if the initial disbursement or contribution to the committee is made by the business entity or organization that is a communicator lobbyist pursuant to Conn. Gen. Stats. §§ 9-333o(a) and 9-333p(a), as amended by the Act, or if the initial disbursement was made by an officer, director, owner, limited or general partner or holder of stock constituting 5% or more of the total outstanding stock of any class of the business entity, pursuant to Conn. Gen. Stat. §9-333o(a), as amended by the Act.

There is an historical component to the word "established" that would appear to require a review of the original statement of organization of the political committee in question. However, on a practical level, construing the word in this manner would likely yield an absurd and unworkable result. For example, a political committee may have been established in 1995 on behalf of an individual who was a communicator lobbyist *at that time*. However, if the individual is no longer a registered lobbyist as of the effective date of the Act, banning contributions from his or her successors who control the political committee today would not serve the legislative purpose of the Act and would require retroactive application of the law; unless, of course, the successors themselves are communicator lobbyists. This result is of great concern to us. However, we cannot

completely ignore the historical origins of a political committee, as that would effectively read "established" out of the new law.

Nevertheless, the word "established" must have a meaning. See Avalonbay Commun. v. Zoning Comm. of the Town of Stratford, 280 Conn. 405, 423 (2006) ([I]n construing statutes, we presume that there is a purpose behind every . . . phrase . . . and that no part of the statute is superfluous.) We therefore construe "established," for purposes of the lobbyist contribution and solicitation ban, to relate back to the formation of the political committee but with a present day component. This will prevent the absurd and unworkable retroactive application that would appear if the common meaning alone were to be utilized. Thus, if the political committee was established by a communicator lobbyist when originally formed and the communicator lobbyist *remains* a registered communicator lobbyist as of December 31, 2006, the committee will be deemed to be "established" by a communicator lobbyist for purposes of the ban.

Moreover, the Ethics Code requiring registration for lobbyists became effective in 1978, and further definitions of client lobbyist were added in 1991. The definition of "communicator lobbyist" was not added to the Ethics Code until the adoption of Public Act No. 95-144. Yet many political committees in existence today were formed prior to the effective date of P.A. 95-144. If at the time of the creation of a political committee, no definition of communicator lobbyist existed, we conclude that such political committee could not have been "established" by a communicator lobbyist. Therefore, no political committee established prior to June 28, 1995, the effective date of P.A. 95-144, will be found to be "established by a communicator lobbyist" for purposes of Conn. Gen. Stat. §§ 9-333l(h) and 9-333l(i).

We now turn to the issue of whether a political committee is controlled by a communicator lobbyist. We begin by construing the word "control." The definition of control is again absent from the relevant statutes. We, therefore, look to the ordinary meaning of the word. Gallogly v. Kurrus, 97 Conn. App. 667 (2006). "Control" means "[t]o exercise authoritative or dominating influence over; direct." The American Heritage Dictionary, (4th ed. 2004). Unlike the word *establish*, which relates back to facts as they existed at the time of the formation of a political committee, *control* can be analyzed in the present tense.

Consequently, the Commission, in making a fact-based determination of whether an individual "controls" a political committee, may consider such factors as whether the individual:

(1) Has substantial involvement or influence in the decision-making concerning how the committee solicits or makes contributions or expenditures, or in the day-to-day activities of the committee;
(2) Directs or participates in the appointment or selection of the committee's officers; and/or
(3) Serves as a committee chairperson, treasurer, deputy treasurer or other officer.

Additionally, it is important to note that the Act also transfers the function of the filing repository for campaign finance disclosure statements from the Secretary of State's office to the State Elections Enforcement Commission, effective December 31, 2006, the same effective date as the new lobbyist contribution ban. As a practical matter, the State Elections Enforcement Commission will require all political committees to re-register with the Commission. Many of the applicable laws changed and the forms have been redesigned to capture information relevant to new requirements of the law, for example, whether a political committee is established or controlled by a communicator lobbyist. Part of the restructuring of the forms and the need to re-register is also to identify and provide for as much permissible activity as possible.

The Commission has received questions concerning whether committees presently controlled by communicator lobbyists must terminate prior to the effective date of the Act. The answer is no. Committees controlled by communicator lobbyists are not required to terminate. They may still make contributions to federal candidates (subject, of course, to federal law), municipal candidates and other political committees that are not established or controlled by covered candidates, pursuant to Conn. Gen. Stat. §9-333t. However, contributions from a communicator lobbyist political committee could not be given to other permissible recipient committees, earmarked to be forwarded to a particular campaign, because the law provides that communicator lobbyists may not make contributions *to, or for the benefit of,* covered candidates.

The Commission has also received questions as to whether there are restrictions on expenditures that committees established or controlled by communicator lobbyists or their immediate family members may make utilizing *existing* committee funds. Existing committees may continue to make expenditures consistent with Conn. Gen. Stat. §§9-333t and 9-333i(g), under existing law, until December 31, 2006, the effective date of the Act. Committees presently established or controlled by communicator lobbyists also have the option of spending their existing funds prior to December 31, 2006, the effective date of the Act. Committees may continue to exist but will have different options going forward from that date. Even after that date, political committees established or controlled by communicator lobbyists or their immediate family members may still make contributions to other political committees that are not established or controlled by candidates for statewide office or the General Assembly, or legislative leadership and legislative caucus committees, up to $2,000 annually pursuant to Conn. Gen. Stat. §9-333t. Communicator lobbyists, their immediate families and their political committees are expressly barred from contributing to or soliciting for legislative leadership and legislative caucus committees.

A committee that is choosing to terminate asks whether it can close its account with a contribution to a newly formed political committee, controlled by the same entity, but with communicator lobbyists removed from control of the new political committee. The Commission concludes that as long as such transfer takes place prior to the effective date of the Act, there is no prohibition on such conduct, and it may be accomplished in accordance with Conn. Gen. Stat. §9-333t. If the new committee is *not* established or controlled by a communicator lobbyist, the lobbyist contribution and solicitation ban will

not apply to how the funds may be spent after December 31, 2006. That assumes that the entity is not itself a communicator lobbyist: Were that the case the newly established political committee would still be *established* by a communicator lobbyist and be subject to the prohibitions in the Act. In the alternative, the same newly formed political committee could still be subject to the Act if it were *controlled* by a communicator lobbyist. The above analysis does not foreclose the possibility that if the same conduct occurred *after* the effective date of the Act that the newly created committee could be restricted from contributing to covered candidates and committees under the theory of successor liability.

The Commission has also been asked whether a committee established by a communicator lobbyist could simply be reorganized to remove any communicator lobbyists from involvement in the political committee. The question assumes that control is the only operative definition applicable to the committee and ignores the element of "establish." Again, that has been limited by the Commission for the reasons stated above, but a committee that was *established* by a communicator lobbyist on or after June 28, 1995, will be subject to the ban if the communicator lobbyist *remains* a communicator lobbyist on December 31, 2006. Such a committee could not reorganize to escape the requirements of the lobbyist contribution and solicitation ban because the historical fact cannot be altered. On the other hand, if a communicator lobbyist was not involved in the establishment of the political committee, but rather presently controls such a committee, the political committee could avoid application of the ban by removing the communicator lobbyist from control of the political committee's activities.

The phrase "established or controlled" is also utilized in the Act for purposes of political committees established or controlled by candidates for statewide office or the General Assembly. Communicator lobbyists are also barred from contributing to these types of committees. Factors the Commission will consider in determining whether committees were established by candidates for statewide office, state senator or state representative are whether:

(1) one of the individuals serving as an officer of the committee at the time of its formation is a candidate for a covered office;
(2) a candidate for a covered office made the initial disbursement or contribution to the committee ; and/or
(3) a candidate for a covered office had an active or significant role in the formation of the committee.

Notably, a similar analysis will apply concerning a present day view of whether a committee is established or controlled by a candidate for statewide office or the General Assembly. For example, a political committee established in 1980 by an individual who was a candidate for state representative at that time, but who was never elected, or was but has since resigned from public office or lost an election, should not be subject to the present ban. However, if said individual is presently a candidate or incumbent office holder on and after December 31, 2006, the committee will be deemed established by a

candidate for statewide office or the General Assembly for purposes of disallowing receipt of lobbyist contributions.

The definition of "candidate" in Conn. Gen. Stat. § 9-333a(11), as amended by the Act, is temporal and identifies four situations that trigger a candidacy. That definition creates a practical problem with respect to incumbent members of the General Assembly and statewide office holders. It is the exception, rather than the rule, that an incumbent does not seek re-election. For purposes of identifying committees that communicator lobbyists cannot give to or solicit for, the Commission will also consider whether the committee was established or is controlled by a member of the General Assembly or statewide office holder. An incumbent officer holder could establish that a political committee that he or she established or controls was not subject to the ban on receipt of communicator lobbyist contributions following a public declaration that he or she would not be seeking re-election or election to another office.

The Commission has also received questions concerning the nature and extent of advice that communicator lobbyists may provide to covered candidates. The Commission concludes that communicator lobbyists may provide advice to covered candidates on campaign strategy, messages, get out the vote initiatives and other campaign purposes that do not relate to fundraising. Providing advice on fundraising to covered candidates may potentially implicate the solicitation ban as such advice could constitute participation in fundraising, which is solicitation pursuant to Conn. Gen. Stat. §9-333a(26). However, the Commission concludes that a communicator lobbyist could provide advice on laws and regulations with respect to fundraising; particularly with respect to communicator lobbyists who may also be attorneys. The Commission has no intention of intruding on a formal attorney/client relationship. Compliance with the law should be encouraged. Communicator lobbyists, whether or not they are attorneys, could answer questions such as the legal contribution limits to a particular candidate, but they must avoid suggesting that a contribution be made. A communicator lobbyist should *not* provide strategic fundraising advice, such as identifying a source of potential donors or a potential venue for a fundraiser. The Commission concludes that that would constitute soliciting as participating in fundraising. A lobbyist should not participate in the fundraising event, but after the fact, could assist another individual for purposes of compliance in the preparation of a committee's statement of receipts and expenditures. A communicator lobbyist should not prepare checks for a treasurer's signature, as that would involve participation and control in the decision-making expenditures of a political committee.

To the extent that lobbyists remain confused or uncertain as to the application of the Act, they are advised to seek further guidance from the Commission. Attempting to seek voluntary compliance is among the Commission's statutory powers and duties as provided by Conn. Gen. Stat. §9-7b(a)(5). A communicator lobbyist may call and anonymously ask a question over the telephone, e-mail or write a letter requesting a written opinion by staff, an Advisory Opinion or further Declaratory Ruling by the Commission.

This constitutes a declaratory ruling pursuant to Conn. Gen. Stat. §4-176 as to the applicability of Conn. Gen. Stat. §§ 9-333l(h) and (i), as amended by October 25 Special Session Public Act 2005-5 and Section 24 of Public Act 06-137.